IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

**CRP.No. 1244 of 2005**

AA.170/2000 of APPELLATE AUTHORITY (LR), KANNUR.
ORDER DATED 29.1.1982 IN S.M.NO.1021 OF 1981 OF THE DEPUTY COLLECTOR, LAND TRIBUNAL, KANNUR.

REVN. PETITIONER: APPELLANT
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AAKKAL MATHAI, S/O.ANTONY,
AGRICULTURIST, RESIDING AT ARIVILANJAPOYIL POST,
ALAKODE AMSOM, ARANGAM DESOM, TALIPARAMBA
TALUK, KANNUR DISTRICT.

BY ADV. SRI.C.MURALIKRISHNAN (PAYYANUR)

RESPONDENTS: RESPONDENTS:
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1. THOMAS MATHEW, S/O.MATHAI,
AAKKAL HOUSE, ARIVILANJAPOYIL POST,
ALAKODE AMSOM, ARANGAM DESOM, TALIPARAMBA TALUK,
KANNUR DISTRICT.

2. PUZHATHI DEVASWOM REPRESENTED BY
ITS EXECUTIVE OFFICER, KANNUR TALUK.

3. P.C.P.MAMOO HAJI, CHAPPARAPPADAVU P.O.,
KOOVERI AMSOM, CHAPPERAPPADAVU DESOM,
TALIPARAMBA TALUK.

4. THE STATE OF KERALA, REPRESENTED
BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.M.A.MANHU
GOVERNMENT PLEADER SRI.DILEEP

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.T.SANKARAN, J.**

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**C.R.P. NO. 1244 OF 2005 A**

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**Dated this the 11th day of December, 2007**

**O R D E R**

The first respondent, Thomas Mathew, obtained purchase certificate for an extent of 1.25 acres as per the order dated 29.1.1982 in S.M.No.1021/1981, on the file of the Deputy Collector (LT), Kannur. The revision petitioner is the father of the first respondent. The revision petitioner was not a party to the SM proceedings. The first respondent filed O.S.No.155 of 2000, on the file of the Munsiff's Court, Taliparamba against the revision petitioner, for injunction in respect of an extent of 64 cents of land. In that case, the first respondent produced the purchase certificate issued in his favour as per the order in SM.No.1021/81. The petitioner alleges that he came to know of the order passed by the Land Tribunal only then.

2. Without much delay, he applied for copy of the order passed by the Land Tribunal and filed A.A.No.170 of 2000, on the file of the Appellate Authority, Kannur. There was delay in filing the appeal. As stated earlier, the order of the Land Tribunal is dated 29.1.1982 and the appeal was filed only on 13.12.2000. The delay was explained by saying that the revision petitioner/appellant was not aware of the proceedings before the Land Tribunal and the order passed by the Land Tribunal. He

came to know of the order of the Land Tribunal only when the purchase certificate was produced by the first respondent before the civil court in a suit filed by him against the revision petitioner.

3. The case of the revision petitioner is that as per gift deed No.2496/1996 he obtained title in respect of 3.60 acres. An extent of 1.96 acres of land out of this extent was assigned by him to Njarakkad Thomas as per document No.2069/1993. Out of the remaining extent, an extent of 64 cents was gifted by the revision petitioner to the first respondent. The revision petitioner contends that the balance extent of one acre is in his possession. The revision petitioner states that in O.S.No.155 of 2000, in the schedule to the plaint, the first respondent has stated that on the southern side of the plaint schedule property therein the property belonging to him in jenm is situated.

4. It is not in dispute that the revision petitioner is not a party to the proceedings before the Land Tribunal. It is also not in dispute that the first respondent obtained an extent of 64 cents of land from the revision petitioner. As the petitioner is not a party to the Land Tribunal proceedings, he is not bound by the order passed by the Land Tribunal and the purchase certificate issued by the Land Tribunal. It is admitted by the parties that civil litigation is pending between them. In these facts

and circumstances, it is only just and proper that a final resolution of the dispute in respect of tenancy is to be made by the Land Reforms Authority. For that purpose, it is necessary to dispose of the appeal by the Appellate Authority on the merits. Taking into account the facts and circumstances of the case, I am inclined to condone the delay in filing the appeal. In fact, as the revision petitioner/appellant was not a party to the proceedings, it cannot be said that he was aware of the order passed by the Land Tribunal. The case put forward by him that he came to know of the order of the Land Tribunal only when the purchase certificate was produced by the first respondent before the civil court, cannot be brushed aside. The Appellate Authority was not justified in dismissing the application for condonation of delay. From the order of the Appellate Authority it is seen that the first respondent has obtained purchase certificate for one acre and 25 cents.

For the aforesaid reasons, the Civil Revision Petition is allowed, the order passed by the Appellate Auithority, dated 17.1.2005, is set aside and the delay in filing A.A.No.170 of 2000 is condoned. The Appellate Authority shall dispose of the appeal on the merits as expeditiously as possible, after affording an opportunity of being heard to both parties. If the Appellate Authority feels that it is necessary to consider the oral evidence, it is not necessary to remand the case to the Land Tribunal.

The Appellate Authority itself would be free to allow the parties to adduce evidence. In the nature of the dispute involved in the case, both parties would be entitled to produce such documentary and oral evidence before the Appellate Authority.

**(K.T.SANKARAN)**
**Judge**

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